

9/8/75

Executive Registry

75-8386

6 SEP 1975

Honorable Edward H. Levi
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Levi:

A number of civil actions have been filed in various Federal courts naming CIA employees and former employees as defendants. In these cases plaintiffs claim damages arising out of actions allegedly taken by the individual defendants in the course of their official duties. Recently the Department has refused requests by some former employees for representation in civil actions on the grounds that on-going investigations of certain CIA activities by the Criminal Division create a potential conflict of interest.

This refusal to represent former employees is particularly disturbing in the Rhode Island case -- Rodney Driver, et al. v. Richard Helms, et al. (U.S.D.C.D.R.I. Civil No. 750224). The problem here is that there are 14 former Agency employees and four current Agency employees listed as defendants being sued in their official and personal capacities. Specifically, the former employees have been served with summonses which require an answer to be filed within 20 days. This time for an answer would be proper if they were sued only in their personal capacities. However, there would be a 60-day period for an answer if they were sued in their official capacities. These former employees have requested representation in their personal and official capacities and have been refused by the Department of Justice due to a pending investigation of the CIA mail intercept program. If they do not engage private counsel, the court may enter default judgments against them in their personal capacities. At this stage in the proceedings, there appear to be valid defenses available to them such as the jurisdiction of the Rhode Island Court. If the former employees are required to engage private counsel for these procedural actions, they will have assumed an unwarranted expense.



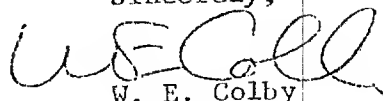
I am distressed by the difficult position of our employees and former employees because of the Department's refusal to give them any representation or counsel in civil matters arising out of their official duties until the ultimate resolution of the investigations by your Criminal Division. These individuals enjoy not only a presumption of innocence, but a presumption that whatever acts they performed were in the normal course of their duties and under proper orders from their superiors. The Department's position places an unwarranted financial burden on a great number of Government employees and former employees, most of whom cannot afford to retain private counsel. To me it seems unconscionable for the Government to permit a civil action to proceed to the point where a judgment may be obtained against a Government employee or former employee simply because it has not completed its own criminal investigation. In view of the statutory responsibilities which you have under 28 U.S.C. 516, I would appreciate your answers to the following questions:

1. If the Department of Justice cannot provide counsel to employees or former employees, will you retain private counsel to defend them?
2. Until the Department of Justice (Criminal Division) recommends the indictment of the employee or former employee being sued, may the Department of Justice (Civil Division) defend that individual?
3. If the Department of Justice refuses to defend Government employees or former Government employees, can you delegate to me the authority to hire private counsel for them?
4. Are you aware of any statute which precludes my using appropriated funds to retain private counsel for present or former Government employees?

The attorneys in the Civil Division have advised my attorneys that these problems will continue as long as the Department is investigating CIA activities which might be related to civil suits filed against present or former employees.

I would appreciate your earliest response to this problem since the time for some of these answers expires on 20 September.

Sincerely,


W. E. Colby
Director

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